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7 **IN THE UNITED STATES DISTRICT COURT**
8 **FOR THE DISTRICT OF ARIZONA**
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10 Paul Grady,

11 Plaintiff,

12 v.

13 Sunbeam Motel, et al.,

14 Defendants.
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No. CV-21-00493-TUC-RM

ORDER

16 On December 2, 2021, Plaintiff Paul Grady filed a Complaint against Sunbeam
17 Motel and an unknown party named as “Betty, manager.” (Doc. 1.) The Court screened
18 the Complaint and dismissed it with leave to amend, finding that Plaintiff had failed to
19 state a claim upon which relief could be granted because he did not allege facts showing
20 that Defendants had violated Title III of the Americans with Disabilities Act (“ADA”).
21 (Doc. 6.) Plaintiff has now filed an Amended Complaint. (Doc. 7.) The Court will
22 dismiss the Amended Complaint with leave to amend.

23 **I. Statutory Screening of Complaints**

24 The Prison Litigation Reform Act states that a district court “shall dismiss” an *in*
25 *forma pauperis* complaint if, at any time, the court determines that the action “is frivolous
26 or malicious” or that it “fails to state a claim on which relief may be granted.” 28 U.S.C.
27 § 1915(e)(2). “[S]ection 1915(e) applies to all *in forma pauperis* complaints, not just
28 those filed by prisoners.” *Lopez v. Smith*, 203 F.3d 1122, 1129 (9th Cir. 2000) (en banc);

1 *see also Calhoun v. Stahl*, 254 F.3d 845 (9th Cir. 2001) (per curiam).

2 A pleading must contain a “short and plain statement of the claim *showing* that the
3 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2) (emphasis added). While Rule 8 does
4 not demand detailed factual allegations, “it demands more than an unadorned, the-
5 defendant-unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678
6 (2009). “Threadbare recitals of the elements of a cause of action, supported by mere
7 conclusory statements, do not suffice.” *Id.*

8 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a
9 claim to relief that is plausible on its face.’” *Ashcroft*, 556 U.S. at 678 (quoting *Bell*
10 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is plausible “when the
11 plaintiff pleads factual content that allows the court to draw the reasonable inference that
12 the defendant is liable for the misconduct alleged.” *Id.* “Determining whether a
13 complaint states a plausible claim for relief [is] . . . a context-specific task that requires
14 the reviewing court to draw on its judicial experience and common sense.” *Id.* at 679.
15 Thus, although a plaintiff’s specific factual allegations may be consistent with a
16 constitutional claim, a court must assess whether there are other “more likely
17 explanations” for a defendant’s conduct. *Id.* at 681.

18 As the United States Court of Appeals for the Ninth Circuit has instructed, courts
19 must “continue to construe *pro se* filings liberally.” *Hebbe v. Pliler*, 627 F.3d 338, 342
20 (9th Cir. 2010). A complaint filed by a pro se litigant “must be held to less stringent
21 standards than formal pleadings drafted by lawyers.” *Id.* (internal quotation omitted).
22 Nevertheless, “a liberal interpretation of a civil rights complaint may not supply essential
23 elements of the claim that were not initially pled.” *Ivey v. Bd. of Regents*, 673 F.2d 266,
24 268 (9th Cir. 1982).

25 If the Court determines that a pleading could be cured by the allegation of other
26 facts, a pro se litigant is entitled to an opportunity to amend a complaint before dismissal
27 of the action. *See Lopez*, 203 F.3d at 1127-29.

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II. The Amended Complaint Fails to State a Claim for Relief

The Amended Complaint states, in relevant part, that (1) plaintiff is disabled within the legal meaning of that term; (2) he was locked out of his motel room by “Betty,” there was no court order “to enforce a lockout,” and he had already paid rent for the month; and (3) as a result of the “lockout” he lacked access to his medication. (Doc. 7.) Plaintiff’s original Complaint alleged federal question jurisdiction pursuant to the ADA (Doc. 1), but the Amended Complaint does not allege the ADA as a basis for jurisdiction over Plaintiff’s claims.

“As a general rule, when a plaintiff files an amended complaint, the amended complaint supercedes the original, the latter being treated thereafter as non-existent.” *Rhodes v. Robinson*, 621 F.3d 1002, 1005 (9th Cir. 2010) (internal quotation and citation omitted).

Although Plaintiff has alleged that he is disabled within the meaning of the ADA and has provided documentation supporting that assertion (*see* Docs. 6, 7), he has not alleged that Defendant denied him accommodations because of his disability. Furthermore, the Amended Complaint does not allege a basis for jurisdiction. Because the Amended Complaint supersedes the original Complaint, Plaintiff may not rely on allegations in previous Complaints without restating them. The Court will dismiss the Amended Complaint with leave to amend. Plaintiff is warned that this case may be dismissed if he fails to file a timely amended complaint curing the deficiencies addressed herein.

Accordingly,

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Dated this 16th day of February, 2022.

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